

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Steven A. Rogers

Serial No.: 10/663,378

Filed: Sept. 17, 2003

For: Empirical Scheduling of Network
Packets

Atty. Docket No.: 006389.00002

Group Art Unit: 2616

Examiner: Mered, Habte

Confirmation No.: 2690

COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE

U.S. Patent and Trademark Office
Customer Service Window, **Mail Stop Issue Fee**
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The examiner-initiated interview summary correctly notes that the two-way double patenting test applies in this situation, and based on that test, no double patenting issue is present. The examiner's statement of reasons for allowance makes certain statements about what is disclosed in the specification of patent 7,468,948, which is not pertinent to this test, and with which applicant does not agree. Furthermore, applicant points out that there is a pending continuation application based on U.S. patent 7,468,948 (assigned serial number 12/336,743, and filed on December 17, 2008), and applicant submits that the two-way obviousness test is also applicable to that case, to the extent that the examiner believes it is in any way pertinent. Applicant assumes that the examiner is able to review the claims of the pending continuation but if not, the examiner is invited to contact the undersigned as soon as possible to obtain a copy.

Dated this 26th day of March, 2009 By:

_____/Bradley C. Wright/

Bradley C. Wright
Registration No. 38,061
Banner & Witcoff, Ltd.
1100 13th Street, N.W.
Washington, D.C. 20005
Tel: (202) 824-3160